IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 318 OF 2006
WITH
FIRST APPEAL NO. 927 OF 2006.

1. Shri Jinendra Devappa Ruge,)
age 65 years, occupation Agri.)
R/o. 6/380, Mangalwar Peth,)
Ichalkaranji, Dist. Kolhapur.)
2. Shri Jayendra Devappa Ruge, age)
40 years, occupation Business .)
R/o. Lat, Tal. Shirol,)
Dist. Kolhapur.)
3. Sou. Malti Appasaheb Thikane,)
age 56 years, occupation)
Housewife, R/o. Pujari Mala,)
Ichalkaranji, Dist. Kolhapur.)

4. Sou. Pushpa Balasaheb Ketkale,)
age 49 years, occupation)
Household . R/o. Pujari Mala,)
Ichalkaranji, Dist. Kolhapur.) ... Appellants

Versus

1. The Special Land Acquisition)
Officer (XI), 109/C, Ward, Bindu)
Chowk, Kolhapur.)

2. The State of Maharashtra,)
through : The Collector, Kolhapur.)

3. Ichalkaranji Municipal Council,)
through : The Chief Officer,)
Ichalkaranji.)... Respondents

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through : The Chief Officer,)
Ichalkaranji. Dist. Kolhapur.) ... Appellants

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5. The Special Land Acquisition)
Officer 11, 109/C, Ward, Bindu)
Chowk, Kolhapur.)

6.The State of Maharashtra,)

through Collector of Kolhapur)
Kolhapur) .. Respondents

Mr. R.V. More for petitioners
Mr. C.S. Ingale for respondent nos. 1 to 3.

CORAM: R.M.S. KHANDEPARKAR
&
SMT. ROSHAN DALVI JJ.

DATE: 14/ 6/2006

ORAL JUDGMENT (Per ROSHAN DALVI J.)

1. In both these appeals the appellants have challenged the judgment and order of the learned 5th Adhoc Additional District Judge, Kolhapur dated 25.11.2004 in Land Reference No. 8 of 2003.

2. The land of the appellants in First Appeal No. 318 of 2006 is sought to be acquired by the respondents therein for the purpose of road widening. These appellants shall be referred to as the "owners" , the respondents shall be referred to as the "State" and the land shall be referred to as the "acquired land".

3. The acquired land is block No. 176 of village Sahapur, within the Municipal limits of Ichalkaranji in District Kolhapur . It is

a large piece of land admeasuring 57.50 ares. The Special Land Acquisition Officer (SLAO) sought to acquire the land under an award passed under Section 11 of the Land Acquisition Act 1894, offering compensation at the rate of Rs.133/- per sq. mtr. The owners applied for enhancement of the amount of compensation under Section 18 of the Land Acquisition Act claiming at the rate of Rs.1000/- per sq. meter. The learned Reference Court after having considered the evidence lead by the parties was pleased to enhance the compensation from Rs.133 per sq. meter to Rs.230/- per sq. meter. The owners claim compensation at the rate of Rs.450/- per sq. meter. The State claims that the offer made by the SLAO at the rate of Rs.133/- per sq. meter is correct. Accordingly both these parties have challenged the aforesaid judgment.

4. The learned Reference Court considered a Civil Suit being Suit NO. 50 of 1993 filed by some of the owners for partition of the acquired land. The suit was decreed on 24.2.1999. The property remained unpartitioned as the preliminary decree passed for partition was not executed and the final

decree has not been passed. The learned Reference Court considered the separate shares of the owners under the aforesaid decree which was a preliminary decree.

5. The learned Reference Court has considered various sale instances of the properties in the vicinity. These are the sale instances for much smaller plots. They were considered on the premise that all the applicants were independent owners of their respective shares.

6. That was the fundamental error upon which the computation of compensation by the learned Reference Court is based. As no final decree was passed before the award came to be passed under Section 11 of the Land Acquisition Act, the property remained an undivided whole. The property therefore is a large plot of land admeasuring 57.50 Ares For such a large land the same instances of smaller plots in the vicinity do not show a comparable market rate. Hence the very thrust of the owners to show the sale deeds and of the learned Reference Court to rely upon the sale instances is incorrect.

7. The SLAO has considered the compensation based upon the

ready-reckoner for vacant lands and the hypothetical layout method for valuation of the adjoining land under block no. 177.

8. It will have to be seen whether that method of computation of compensation is correct. The affidavit of examination in chief of one of the owners concedes in para 22 the ready-reckoner and the hypothetical plotting system applicable to large area of land. It is only on the ground that the said land is partitioned between the owners that they claim that they are having small area of land for which the method of computation would be to see the sale instances of the adjoining and nearby lands.

9. Since upon the admitted position that the lands are not yet partitioned, the final partition decree not having been passed in RCS Suit no. 57 of 93 filed by the owners in the District court at Kolhapur, on their own admission that they are not independent and separate title holders of the land so partitioned by them, the mode of computation made by the SLAO must apply to the acquired land.

10. Besides this, the evidence shows that there are two pits in

the acquired land. One pit is 125 sq. mtr., and the other 7.50 sq. mtr. A part of the land of about 10 Ares has black cotton plain soil and the remainder of the land is red murrum land. The black cotton plain soil land has N.A. Potentiality. The evidence further shows that the land slopes from the eastern to the western side. It is further admitted in the evidence that there are Government bunds on the land.

11. The cross examination shows that there are ditches on the acquired land sloping from eastern to western side and the land is unirrigated. Part of the land, approx 10 gunthas, is cultivable the remaining land being un- cultivable.

12. The fact that the land has some access from an old road and has electricity and water connection has been taken care of by the SLAO , whilst computing the compensation amount.

13. The further evidence lead by the owners is of little consequence in view of the fact that sale price of adjoining land need not be considered for such a large land.

14. The owners, ofcourse, claim that the part of the land is not acquired rendering it useless and inconvenient. They claim an amount of Rs.2 lacs on the ground of severance of the

land. However, if the land is as attractive as made out by them within the Municipal limits of Ichalkaranji, which is stated to be the Manchester of India, the remainder of the land falling on the road would fetch a price at the current market rate of small plots and in the adjacent locality which is higher than what can be obtained for the large acquired land. That would enure for the benefit of the owners.

15. The learned Reference Court, after considering various judgments for computation of the compensation amount came to the conclusion that after deducting 40% of the market value since the owners' land is agricultural land and not yet developed, computed the compensation at the rate of Rs.230/- per sq. meter. Had the owners' land been a small plot as the neighbouring land that computation would not have been accurate. That not being so the order of the learned Reference Court is liable to be set aside. Compensation fixed by the SLAO is therefore required to be upheld.

16. In the circumstances F.A. No. 318 of 2006 fails and is dismissed. First Appeal No. 927 of 2006 succeeds. The order dated 25.11.2004 is set aside. The compensation fixed by

the SLAO is confirmed. That compensation is already paid to the owners. Hence there will be no order as to costs. Both appeals are disposed of accordingly.

(MRS ROSHAN DALVI J) (R.M.S. KHANDEPARKAR J.)